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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1974

No. 74-110

PFOTZER ET AL v. THE CITY OF NORWALK

MICHAEL WARHOLIC ET AL

REPLY BRIEF (as provided by Rule 41(3)) to respondent's "BRIEF IN OPPOSITION FOR A PETITION OF WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT."

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Petitioners pro se

P.O. Box 987
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SUPREME COURT OF THE UNITED STATES

October Term, 1974

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REPLY BRIEF

STATEMENT

Petitioners respectfully submit this Reply Brief in reply to brief of respondent, the City of Norwalk.

ARGUMENT

Respondent clearly concedes, now, disputed Section 52-329 of the Connecticut General Statutes was unconstitutional and that the petitioner's request for a three judge court in respect thereto presented a substantial Federal question and (that a basis for a three judge court probably existed)

It is respectfully submitted that petitioner's arguments in respect to the other statutes attacked as unconstitutional, and most especially in regard to Section 52-281 of the Connecticut General Statutes, equally present a substantial Federal question and a basis for a three judge court, particularly when supported by the Second Circuit opinion in Sugar v. Curtis (filed October 7, 1974), Three Judge Court, Southern District of New York, 74 Civ. 78, Opinion No. 41322.

In Sugar, it is noted that the Second Circuit, found it to be a fatal defect that the subject New York statute did not provide for a post-attachment hearing at which the plaintiff would have the burden of establishing the validity of the garnishment or attachment.

The same fatal defect being present in Connecticut General Statute Section 52-281, upon which respondent (and its co-defendants) relie l for a so-called substitute attachment, it is respectfully submitted that the Sugar holding is equally applicable to the case at bar and that the subject Connecticut General Statute, Section 52-281, is tainted with the same fatal defect as the New York statute in Sugar, supra.

It follows, therefor, that if a substantial Federal court can mandate a three judge court is involved in determination of the constitutional invalidity of Section 52-329 and, as in Sugar, the relevant New York statute, and the conditions precedent for a three judge court and for determination of the substantial Federal question presented by Connecticut General Statute Section 52-281 is equally present herein.

Respondent's Point 2 is substantially in misconstruing petitioner's position, which at all times sought to establish an illegal detention of petitioner's property without due process of law, which illegal detention was predicated by respondent and its co-defendants on unconstitutionally void state statutes.

Respondent's argument (on pages 11-12) attempts to over-rule the effect of Mitchum v. Foster (1972), 407 US 225 which totally excepted Section 1983 Civil Rights actions from the anti-injunction impact of 28 USC 2283, and respondent argues injunction against this 1983 action herein, although it quotes from Mitchum.

On page 13 of respondent's brief, it attempts to support its position that petitioners have not made a showing of irreparable injury by the illegal detention of their funds, thus ignoring that petitioners loss of use of virtually all its funds (following the settlement of its large accounts payable - exclusive of large loans - as subsequent to the City of Norwalk's partial payment of the judgment of $246,788.10 as obtained against it and others) over a period from November 19, 1971 to 1974 (when petitioners settled with co-defendant Dorr-Oliver); and City's withholding of full payment of judgment culminated in petitioners being forced out of their construction business, and which forseeable consequence constitutes irreparable injury to petitioners.

Respondent's argument, therefor on the applicability of 28 USC 2283 runs counter to respondent's own concession in its brief that, clearly, in attacking Section 52-329, of the Connecticut General Statutes, petitioners were presenting a substantial Federal question and were entitled to a three judge court, and its 2283 argument also runs counter to the decision in Sugar, supra, as well as this Court's holding in Mitchum.

Respondent's final argument, under Point IV, seem to take the position that because one Judge can decide whether or not a three judge court is proper, that decision is not reversible where there is error in the decision by the one judge court.

Obviously, if the one judge court, in fact, erroneously decides the question of whether or not a substantial Federal question is presented and whether or not a three judge court is proper, that decision is reviewable.

CONCLUSION

Wherefore, plaintiffs respectfully submit that the petition for certiorari herein ought to be granted.

Respectfully submitted,

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and

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